UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

The Mortgage Specialists, Inc., et al

v. Case No. 13-cv-156-PB

New Hampshire Banking Department Commissioner

O R D E R

I recuse myself from presiding over this case and direct that it be assigned to another judge.

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
United States District Judge

April 5, 2013

cc: Counsel of Record

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

THE MORTGAGE SPECIALISTS, INC., and MICHAEL J. GILL, Plaintiffs, v. COMMISSIONER OF THE NEW HAMPSHIRE BANKING DEPARTMENT and THE NEW HAMPSHIRE BANKING DEPARTMENT. Defendants.	Civil Action No. 1:13-cv-00156

PLAINTIFFS' MOTION TO RECUSE THE HONORABLE JUDGE JOSEPH N. LAPLANTE

The Plaintiffs, The Mortgage Specialists, Inc. and Michael J Gill, through undersigned counsel, move this Honorable court to Disqualify the Honorable Joseph N. Laplante, United States District Court Judge, from presiding over any proceedings in this cause.

In Support of this Motion, the Movants state as follows:

1. On or about April 3, 2013, the Plaintiffs' Verified Complaint, Emergency Motion for Temporary Restraining Order and Injunctive Relief and supporting documentation were filed in the United States District Court of New Hampshire against the Commissioner of the New Hampshire Banking Department. The matter was assigned to the Honorable Judge Paul J. Barbadoro.

2. On or about April 5, 2013, a telephonic conference was held with all the Parties, wherein Judge Paul J. Barbadaro informed the Parties of his decision to recuse himself from the matter because his child and Commissioner Glenn Perlow's child were at one time involved in organized youth sports together and felt that a conflict of interest existed as they interacted with each other on that basis. Shortly thereafter, the matter was transferred to the Honorable Joseph N. Laplante.

3. The Plaintiffs seek Judge Laplante's recusal because of their contention that Judge Laplante has conflicts of interest with a potential witness in this matter, Attorney Jonathan Ross, and that Judge Laplante is biased and prejudiced against the Plaintiffs. Pursuant to federal law, a federal judge is required to recuse himself from a case "in which his impartiality might reasonably be questioned." *United States v. Pulido,* 566 F.3d 52, 62 (1st Cir.2009) (quoting 28 U.S.C. § 455(a)). The inquiry into a judges impartiality is objective, from the perspective of a "reasonable person," not one who is " 'hypersensitive or unduly suspicious,' " but one who is a " 'well-informed, thoughtful observer,' " who is aware of all of the surrounding facts and circumstances. *United States v. Sierra Pac. Indus.,* 759 F.Supp.2d 1198, 1203 (E.D.Cal.2010) (quoting *United States v. Holland,* 519 F.3d 909, 913 (9th Cir.2008)); *see also United States v. Pulido,* 566 F.3d 52, 62 (1st Cir.2009), *cert. denied,* 131 S.Ct. 632 (2010). Based upon the assertions set forth below the Plaintiffs contend that Judge Laplante's ability to remain impartial in this matter is reasonably in question and a reasonable and objective person who is aware of the of all the surrounding facts and circumstances would question Judge Laplante's impartiality .

4. The Plaintiffs' discovery of Judge Laplante's conflict of interest with potential witness and former Wiggin & Nourie, P.A. president, Attorney Jonathan Ross was recently discovered by Plaintiff, Michael J. Gill. The Honorable Joseph N. Laplante, was previously employed as an attorney for the firm Wiggin & Nourie, P.A. Upon information and belief, Judge Laplante remained employed with Wiggin & Nourie, P.A. for a period of approximately three years.

5. In the Plaintiffs' case against the Defendants, the Plaintiffs allege that an ongoing conspiracy has existed between some of the Plaintiffs' former attorneys, mainly Alexander Walker and the Defendants. Part of the conspiracy is Jonathan Ross who was Mr. Gill's former divorce attorney, referred to Mr. Gill by Alexander Walker and it is expected that Attorney Ross will provide relevant and admissible evidence germane to the allegations in the above caption matter. However, based on the allegations in the Complaint, Attorney Ross will likely attempt to serve the interests of the Defendants' as there are allegations set forth against Ross that he was part of the conspiracy and he will likely be treated as a hostile witness to the Plaintiffs.

6. Currently, Plaintiff, Michael J. Gill is a Defendant and Counterclaim-Plaintiff in a lawsuit involving Wiggin & Nourie, P.A., Jonathan Ross, and Darla Sedgwick in the Rockingham Superior Court, Civil Action No. 2011-CV-00591. In that matter, Wiggin & Nourie, P.A. Mr. Gill's former divorce attorneys filed suit against Mr. Gill for unpaid attorney's fees and Mr. Gill has counterclaimed against his former divorce attorneys Wiggin & Nourie, P.A., Jonathan Ross and Darla Sedgwick for legal malpractice including but not limited to overbilling. Furthermore, Jonathan Ross, former president of the now defunct Wiggin & Nourie, P.A. was a former co-worker of Judge Laplante.

7. In fact, Wiggin & Nourie, P.A. was Judge Laplante's first place of employment as an attorney. Upon being sworn in as a United States District Court Judge, Judge Laplante was quoted in his speech citing a number of mentors in his career, more specifically he cited as positive mentors the attorneys he worked with at Wiggin & Nourie, P.A.: "I learned about professionalism – putting someone else's interests ahead of your own, for a living. I learned how to treat other members of the profession, as well as those we serve: our clients." He cited Thomas Pappas and Arnold Rosenblatt, who counseled him to be "uncompromising" in the standard of his work product, and Anthony Marts who urged him to "be yourself" in that it was "OK to be a little unconventional." "Richard McNamara taught me the difference between a trial lawyer and a litigator, and from Jon Ross, I learned important lessons about negotiating: 'There's nothing wrong with taking a reasonable position from the outset and sticking to it rather than being a moving target.' He also taught me to develop the ability to say 'no' to people, and not to fear confrontation." See New Hampshire Bar Association Article dated February 28, 2008 attached hereto as Exhibit 1.

8. Judge Laplante's bias and prejudice came to light to the Plaintiffs in a recent Telephonic Conference pertaining to the instant matter. On May 1, 2013, Judge Laplante held a Telephonic Conference with the Parties that was held off the record. In attendance for the Plaintiffs were the following: Plaintiff, Michael J. Gill, president of the Mortgage Specialists, Inc., counsel for the Plaintiffs, Michael S. Parousis, Neil Mulligan, Operations Manager, Claudia Maguire, Compliance Manager, and Carrie Lemieux, Paralegal. Attorney Nancy Smith and a number of her associates were in attendance for the Defendants. Judge Laplante scheduled the Conference following the Plaintiffs'

Request for an Emergency Hearing on the Motion for a Temporary Restraining Order and Injunctive Relief. Judge Laplante raised the fact that he had worked at Wiggin & Nourie, P.A. and worked with Jonathan Ross and knew him on a personal basis. Mr. Gill requested his recusal which the Judge refused to grant sua sponte, stating that he did not believe his former associations with Attorney Ross gave rise to his self recusal and advised the Plaintiffs to file their Motion for Recusal and upon review he would take the matter into consideration.

9. Subsequent to that issue, the Judge inquired into the role Attorney Ross played into the matter against the Defendants. Plaintiffs' counsel briefly described his role in the matter (see Plaintiffs Complaint, including, but not limited to ¶ 25- ¶ 45, attached hereto as Exhibit 2) and the need for his testimony. Thereafter, Judge Laplante in an alarming manner, appeared to attack the efficacy of the allegations contained in the Complaint and then proceeded to question the ethical integrity of Attorney Parousis, by suggesting he review the Rules of Professional Responsibility, implying that he may be in violation of certain Rules of Professional Responsibility by litigating and/or prosecuting the claims made in the Complaint. The Plaintiffs and their counsel found this to be both unprofessional and teetering on intimidation. Based upon the former relationship between Judge Laplante and Jonathan Ross, Ross's potential role as a key witness, and the remarks made during the Teleconference, the question of Judge Laplante's ability to preside over this matter in an impartial manner is put into question by the Plaintiffs.

10. Therefore, the appearance of impropriety would support the recusal of the Honorable Joseph N. Laplante, United States District Court Judge, from presiding over any proceedings in this cause.

WHEREFORE, The Plaintiffs, The Mortgage Specialists, Inc. and Michael J Gill, move this Honorable Court to enter an ORDER recusing Joseph N. Laplante United States District Court Judge, from presiding over any proceedings in the above-captioned cause.

Dated: May 3, 2013

Respectfully submitted,

THE MORTGAGE SPECIALISTS, INC. and
MICHAEL J. GILL
By their attorneys,

/s/ Michael S. Parousis
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

THE MORTGAGE SPECIALISTS, INC., and MICHAEL J. GILL, Plaintiffs, v. COMMISSIONER OF THE NEW HAMPSHIRE BANKING DEPARTMENT and THE NEW HAMPSHIRE BANKING DEPARTMENT Defendants.	Civil Action No. 1:13-cv-00156

CERTIFICATE OF SERVICE

I, Michael S. Parousis, hereby certify that I have served the following document through ECF by the Court's Electronic Filing System on Nancy J. Smith, Esq. attorney of record for the Defendant, Commissioner of the New Hampshire Banking Department.

1. *Plaintiffs' Motion to Recuse the Honorable Judge Joseph N. Laplante*

Defendant's Attorney
Nancy J. Smith, Esq.
Senior Assistant Attorney General
Civil Bureau
NH Department of Justice
33 Capitol Street
Concord, NH 03301
nancy.smith@doj.nh.gov

Dated: May 7, 2013

Respectfully submitted,
THE MORTGAGE SPECIALISTS, INC. and MICHAEL J. GILL
By their attorney,

/s/ Michael S. Parousis
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EXHIBIT "1"

Member Login
Member Login Required for Casemaker
Casemaker
Go
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Judicial Branch
New Hampshire Practice & Procedure Manual
Law Firm Merchant Account
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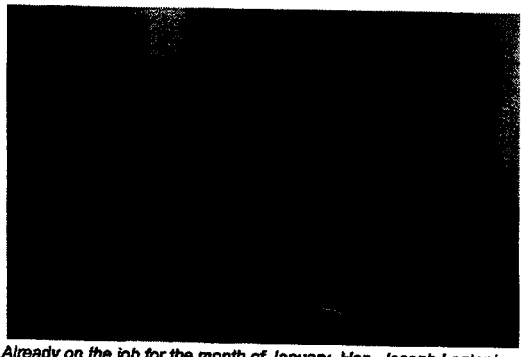
866.376.0950

Bar News - February 22, 2008

Judge Laplante Recalls Mentoring Throughout Career

By: Dan Wise

At his Feb. 1 ceremonial swearing in, the newest federal district court judge in New Hampshire, Judge Joseph N. Laplante, was the subject of glowing tributes by those he has worked with during his 18-year legal career. When it was his turn to speak, the former advocate delivered a persuasive summation on the importance of mentors – in life and in the law.



Already on the job for the month of January, Hon. Joseph Laplante took the federal judicial oath before a packed courthouse of family and friends at a formal ceremony on Feb 1. The oath was administered by Laplante's father-in-law, Joseph A. Fiore, an attorney in New York state. Laplante's wife, Carol, looks on.

Despite a persistent snow that made traveling difficult, the high-ceilinged ceremonial Courtroom 3 of the Warren B. Rudman Federal Courthouse was jammed with colleagues, family and friends of Laplante – including many from law enforcement, a testament to Laplante's reputation as "a cop's prosecutor."

Speakers – US Senator Judd Gregg, US Attorney Thomas Colantuono and Hon. Gary Hicks, a NH Supreme Court Associate Justice who was a partner at Wiggin & Nourie where Laplante started his legal career – lauded Laplante's work ethic and intelligence. NH Attorney General Kelly Ayotte and John Kacavas, former colleagues at the NH Attorney General's office and close friends, provided insights into Laplante's personality and values.

Even Chief Judge Steven McAuliffe, before whom Laplante often appeared in court as a prosecutor for the US Attorney's Office, joined in the accolades, commenting on his advocacy and compassion. (McAuliffe has followed Laplante's career for some time. The judge noted that Laplante had received the NH Bar Foundation's Robert E. Kirby Award in 2001 – an award presented to an attorney 35 years or younger recognizing excellence in advocacy and civility. Ayotte (2004) and Kacavas (1996) also have received the honor.)

When it was his time to speak, Laplante recognized many mentors who have helped him, and emphasized his roots in the community. He noted that the judicial robes he had newly donned were not new – they had belonged to the late William H. Barry, who served many years as federal Magistrate Judge for the District of NH. Judge Barry was a fellow Nashuan, someone who lived in the same neighborhood where Laplante grew up. "I never had the sense that "Mr." Barry – he never asked anyone to call him "Judge" – the judge who lived down the street, made anyone around him feel unimportant. My goal is to wear this robe with the same humility," Laplante said.

Laplante said his first mentor was his father, Normand Laplante, who he said, "could build anything, and fix anything. I was all thumbs but he taught me so much, and he and my mother gave me a great start by making sacrifices for my benefit. I came out of law school debt-free – and I knew how unique that was, and the freedom it afforded me. I was able to make choices, like public service and criminal prosecution, based on job satisfaction rather than an obligation to pay down student debt."

Another key mentor for Laplante was attorney Gerald Prunier – another "neighborhood dad" who helped Laplante realize that a lawyer was something he could be. Prunier was Laplante's "rec league" and CYO basketball coach and he helped reinforce to Laplante the importance of "hustle." "Show up every day; go to every practice; play with intensity; and never, ever let up. And he really lived it."

"In high school and college, I did not have a lot of mentors (because I thought I knew everything), but I had a lot of friends," said Laplante. "I know it sounds pathetic to many of you, but I still hang around with the same guys as I did in high school."

At his first legal job, at Wiggin & Nourie, Laplante cited a number of mentors and the firm's commitment to professionalism: "I learned about professionalism – putting someone else's interests ahead of your own, for a living. I learned how to treat other members of the profession, as well as those we serve: our clients." He cited Thomas Pappas and Arnold Rosenblatt, who counseled him to be "uncompromising" in the standard of his work product, and Anthony Marts who urged him to "be yourself" in that it was "OK to be a little unconventional."

"Richard McNamara taught me the difference between a trial lawyer and a litigator, and from Jon Ross, I learned important lessons about negotiating: 'There's nothing wrong with taking a reasonable position from the outset and sticking to it rather than being a moving target.' He also taught me to develop the ability to say 'no' to people, and not to fear confrontation."

After three years, Laplante – who had considered joining the FBI out of law school – followed his true calling and joined the Attorney General's Office. He rose rapidly in the ranks in the criminal prosecution side, and became a top homicide prosecutor, often teamed up with Kacavas. Laplante cited lessons learned about courtroom advocacy from the then-Criminal Bureau Chief Michael Ramsdell. Kacavas, too, was a mentor. "We worked so closely together. Once a judge asked us during a pretrial, 'Who's lead counsel in this case?' We both said, 'I am,'" Laplante said with a laugh.

Another Nashua native and friend, Ayotte, joined the Attorney General's office too – and Laplante said he played the role of mentor to her. "I told her – don't shrink back, take everything on. That's how you'll learn."

At the US Attorney's Office, first in Boston and then in NH, Laplante found himself in managerial roles and serving on collaborative task forces with other law enforcement agencies. He said he cherished the experience of working side-by-side on one case with a high school buddy, a Nashua police detective temporarily assigned to the DEA as a Task Force Agent.

Laplante acknowledged that his impatience with bureaucracy at times made him an imperfect manager after he was named First Assistant US Attorney under Colantuono. "At the US Attorney's Office, my decision-making style was to make a snap decision from my gut, based on limited information – and then run down to [Civil Bureau Chief] Gretchen Witt's office to ask her if the damage was irreparable."

Laplante acknowledged that in his new role as a judge he had already been the beneficiary of mentoring from his colleagues, Judges McAuliffe and Barbadoro, Senior Judge DiClerico, Circuit Judge Howard and Magistrate Judge James Muirhead. Laplante also singled out for praise his law clerk of one month, Ken Sansone, for his assistance at the start of Laplante's judicial career.

Laplante closed his remarks by addressing his four children sitting in the jury box with his wife, Carol Fiore (also a Bar member). "Hearing and seeing all of this, you must think your father has a pretty important job," he said, his voice shifting to a gentler tone. "Just never forget – it's not as important as the job your mother does for you, and for us, every single day. We, all four of us, would be lost without her. Especially me."

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EXHIBIT "2"

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

THE MORTGAGE SPECIALISTS, INC., and MICHAEL J. GILL, Plaintiffs, v. COMMISSIONER OF THE NEW HAMPSHIRE BANKING DEPARTMENT and THE NEW HAMPSHIRE BANKING DEPARTMENT. Defendant.	Civil Action No. 1:13-cv-00156

AMENDED VERIFIED COMPLAINT AND JURY DEMAND

Introduction

This case arises out of abuses of regulatory authority granted to the Defendants Commissioner of the State of New Hampshire Banking Department and the New Hampshire Banking Department (hereafter collectively, "the Department"), as well as a longstanding conspiracy between the Department and certain attorneys to engage in tortious conduct designed to put Plaintiff. The Mortgage Specialists, Inc. (hereafter, "MSI" or the "Company") out of business and to cover up the Department's own oversight failures, including the publicly embarrassing debacle concerning Financial Resources Mortgage, Inc. ("FRM"), a wide-ranging Ponzi scheme that operated in New Hampshire for years with impunity from Department control. MSI, an entity regulated by the Department as a mortgage broker, has endured years of harassment by the Department and a continuing cover-up, including performing periodic audits beyond the scope of its constitutional and statutory authority; conspiring with former legal counsel to MSI in an attempt to cover up the Department's (and MSI's counsel's) own

malfeasance; and violations of its own enabling statutes prohibiting the public dissemination of information provided to it by its licensees (in this case, by MSI) on a confidential basis in connection with a Department audit. These abuses have constituted threats of sanctions against MSI, including loss of its license and business, by the Department which have lingered and remained unresolved for years. Due to the levels of corruption it has learned of and been subject to at the state court level, MSI must now seek redress of its grievances in the federal court system.

Most recently as part of its efforts to cover up the conspiracy, the Department commenced a purported periodic examination which, as implemented, went well beyond the bounds of its statutory authority as well as due process and equal protection limits. Issues concerning the examination came to a head when the Department threatened MSI, stating that its license to operate would be "in jeopardy" if MSI failed to comply with an audit request to provide over one million electronic messages – that is, all electronic messages sent and received by all of MSI's over 100 employees for a six-month period (which demand was later reduced by a *de minimus* to a four-month period). Not wanting to risk its license, its business, and the potential loss of customers and the jobs of its current employees, MSI had no choice but to comply under duress.

Parties

1. Plaintiff, The Mortgage Specialists, Inc. ("MSI"), a corporation duly incorporated under the laws of the State of New Hampshire, is a mortgage loan origination company. MSI's principal place of business is located at 2 Main Street, Plaistow, New Hampshire, and it operates out of three other locations in Nashua, Manchester, and Somersworth, New Hampshire. MSI is duly licensed by the Department as a mortgage broker pursuant to RSA 397-A:1 *et seq*.

2. Plaintiff, Michael Gill ("Gill") is a natural person residing in Derry, County of Rockingham, New Hampshire. At all relevant times, Gill has been the president of MSI and its majority owner. Following his March 2012 divorce decree, Gill has been the sole owner of MSI.

3. Defendant, the Commissioner of the New Hampshire Banking Department is the chief executive of an executive agency of New Hampshire state government charged with, among other duties, regulating non-bank consumer loan lenders and loan brokers.

4. Defendant, the New Hampshire Banking Department is an executive agency of New Hampshire state government charged with, among other duties, regulating non-bank consumer loan lenders and loan brokers.

Jurisdiction and Venue

5. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §1331, as it involves a claim or claims arising under the Constitution and laws of the United States, as well as under the Court's supplemental jurisdiction pursuant to 28 U.S.C. §1367.

6. Venue in this District is proper pursuant to 28 U.S.C. § 1391, in that one or more of the defendants or their agents, or certain of them, reside or may be found here, a substantial part of the events giving rise to Plaintiff's claims occurred here, and one or more of the Defendants transact business here.

Background

7. MSI is a New Hampshire corporation providing mortgage brokering and mortgage banking services in New Hampshire, Massachusetts and Maine. Prior to the resolution of the marital divorce between MSI's president Gill and his former wife Sarah Gill, Gill was an 80% owner of MSI and Sarah Gill was a 20% owner of MSI. Following the entry of a settlement of the divorce in March 2012, Gill became the sole owner of MSI.

8. In and around 2008, MSI and Gill were examined by the Department relative to the business practices of MSI. As set forth in greater detail below, MSI was forced under threat of closure by the Department to enter into a Consent Order dated August 18, 2008 ("2008 Consent Order").

9. In October 2008 -- when the mortgage industry in New Hampshire and nationwide was in virtual free fall, with the economic crisis creating havoc in MSI's business – certain highly confidential information of MSI which MSI had provided to the Department in connection with the 2008 examination – as well as defamatory statements regarding MSI and its president Gill – was posted by an anonymous source and appeared on the web site http://www.ml-implode.com, which was operated by Implode-Explode Heavy Industries, Inc. ("Implode"). Discovery in subsequent litigation between MSI and Devine Millimet has shown, however, that Attorney Walker was provided with a copy of these defamatory statements and the confidential information posted on the Implode website more than two weeks prior to MSI itself receiving a copy.

10. In November 2008, MSI directed Devine Millimet to initiate the Implode Action seeking to uncover the source of the leaked documents and the identity of the anonymous poster.

11. In February 2011 an Order and judgment were entered in the Implode Action requiring disclosure of the source of the information leak. Though pressed by its clients MSI and Gill to pursue all leads concerning the source of the leak, New Hampshire-based law firm Devine Millimet & Branch, P.A. ("Devine Millimet"), under the leadership and direction of its managing partner Attorney Alexander Walker, Jr. ("Attorney Walker"), effectively did nothing to learn the source of the leak. This was in spite of Attorney Walker's self-proclaimed "strong relationship" with senior Department personnel, which was corroborated on information and belief by other

attorneys at Devine Millimet.

12. On information and belief, the reason for the inaction by Attorney Walker and Devine Millimet was the fact that a conspiracy existed between them and the Department, whereby it was to the advantage of all conspirators that MSI and Gill continue to be distracted by the leaks and administrative examinations concocted by the conspirators. The nature, scope, and elements of the conspiracy are set forth further below.

13. In addition to previous examinations conducted by the Department, MSI was subjected only recently, commencing on March 4, 2013, to a purportedly normal and periodic examination which, upon examination, has been anything but normal. The examination has, as of the filing of these claims, been ongoing without any conclusion in sight.

14. Further, the Department has demanded, under its purported record-keeping authority, electronic copies of all email communications sent and received by all of MSI's over 100 employees for the four month period November 1, 2012 through March 1, 2013. In what can only be described as the proverbial "fishing expedition," the Department is expecting that MSI will provide it with electronic copies of potentially millions of pages of message so that the Department can, at its whim, troll through MSI's information at its leisure.

15. MSI has been compliant and provided the Department with access to all of its information while on site, and has refused no request other than the release of information protected by the attorney-client and other privileges.

16. When MSI initially balked at acceding to the Department's overbroad and unfocused demands for electronic messages, MSI was told that refusal to accede to the demand would place its license to operate "in jeopardy." Under this not-so-thinly veiled threat to close down MSI's business, MSI had not choice but to comply and begin the process of providing the

information requested.

17. The Department's latest examination is a violation of MSI's rights, thought it is only the latest in a series of misconduct and wrongdoing by the Department against MSI.

Facts

The FRM "Ponzi" Scheme and the Department's Role

18. In November 2009, Financial Resources Mortgage, Inc. ("FRM") – a Meredith, New Hampshire-based mortgage company licensed and regulated by the New Hampshire Banking Department –closed its doors following a financial collapse. In a report prepared after extensive findings of fact under the auspices of the New Hampshire Secretary of State's office, FRM's corporate structure, mortgage loan strategies, and relation to an unlicensed loan servicer were found to be an "elaborate Ponzi scheme."

19. The collapse of FRM was a significant public embarrassment for the Department and highlighted years of inaction by the Department with respect to its oversight of FRM.

20. For several years prior to FRM's eventual collapse, the Department effectively looked the other way concerning its oversight responsibilities of FRM. This was due in large part to the undisclosed conflict of interest that arose between then Commissioner Peter C. Hildreth and FRM, in which Commissioner Hildreth's two brothers Jon and Charles Hildreth were investors.

21. As early as 2003, the Department senior staff was alerted to Commissioner Hildreth's conflict of interest with FRM. Senior staff reported this to Commissioner Hildreth, but Commissioner Hildreth did not agree that a conflict of interest existed nor did he recuse himself from further oversight responsibilities over FRM.

22. On October 2005, FRM repaid the investment made in FRM by Jon Hildreth,

brother of the NBHD Commissioner Peter C. Hildreth. In June 2006, FRM informed the senior staff of the Department concerning this. No action was taken by the Department in the form of an examination or enforcement action, and Commissioner Hildreth did not at that time recuse himself or acknowledge the conflict of interest between him personally and FRM. Commissioner Hildreth's brother Jon, with his early repayment by FRM, was allowed to avoid significant financial losses that others without Jon Hildreth's connections eventually suffered in the November 2009 collapse.

23. The demise of FRM's criminal enterprise left more than 150 lenders with an immediate loss of approximately $33 million. New Hampshire residents lost significant sums of money and, in some cases, their life savings in part due to inaction by the Department.

24. Following investigations by other state agencies, the Department has been publicly and strenuously reprimanded by other government personnel, most notably by former New Hampshire Governor John Lynch. Governor Lynch stated publicly that Commissioner Hildreth and the Department missed several opportunities to close FRM: "There wasn't a single red flag; there were a series of red flags that kept coming in year after year after year." A member of the Executive Council found that it appeared the banking lobby had too much power over the Department, claiming that the banking lobby – the entities supposedly regulated by the Department – "had control of the Banking Department."

The Gill Divorce Action

25. In March 2007, Sarah Gill filed a petition for divorce in the from Gill. That petition was filed in the Salem, New Hampshire, Family Division of the state court.

26. Gill turned first to his primary counsel, Alexander Walker, Jr., Esquire, of Devine Millimet & Branch, P.A. ("Devine Millimet"), for assistance. David S. Phillips, Esquire, a

partner of Attorney Walker's at Devine Millimet, initially represented Gill in the divorce.

27. Due to a conflict issue, Devine Millimet withdrew in early July 2007 and directed Gill to retain L. Jonathan Ross, Esquire, of Wiggin & Nourie, P.A. ("Wiggin & Nourie") to represent Gill in the divorce. Attorney Ross and Wiggin & Nourie appeared for Gill in his divorce on July 31, 2007. Devine Millimet, however, stayed involved in the divorce case purportedly to represent the interests of MSI, which was then owned 80% and 20% by Gill and Sarah Gill, respectively, and was the largest marital asset involved in the divorce.

28. In February 2008, Gill was informed by Wiggin & Nourie of a possible basis to disqualify Sarah Gill's counsel, Stephen L. Tober, Esquire, based on Attorney Tober's prior representation of one of Attorney Ross' partners in Wiggin & Nourie, Attorney Darla Sedgwick. Gill was not informed at that time of other conflicts between Attorney Ross himself and Wiggin & Nourie, based on prior representation of them by Gill's wife's counsel, Attorney Tober.

29. These undisclosed conflicts included the fact that Attorney Ross and Attorney Tober – who were technically adversaries in the divorce case – were also close personal friends who had vacationed together and served together on numerous bar organizations. Further, the undisclosed conflicts included that Attorney Tober had, in fact, personally represented Attorney Ross and Wiggin in litigation, including claims for legal malpractice.

30. On information and belief, a conspiracy existed between Gill's attorneys and those of his wife, including without limitation Attorneys Tober, Ross and Walker, to churn and bill excessive and unnecessary legal fees to the Gills in the divorce case, which was at that time one of the largest divorces by value of marital assets (approximately $50 million) in New Hampshire. Further, these attorneys knew of, participated in, and/or actively concealed the destruction of computer and other evidence in the divorce case.

31. The aforementioned undisclosed conflicts and evidence destruction are the subject of a current state court lawsuit. However, when Attorney Ross of Wiggin refused to allow the filing by his partner Attorney Sedgwick of a disqualification motion based on, among other things, his own prior representation by, and close personal relationship with, his putative adversary Attorney Tober, Gill consulted with his counsel Attorney Walker at Devine Millimet.

32. In or about May 2008, Gill met with Attorney Walker and other attorneys of Devine Millimet at their offices. All of these attorneys, including Gill's trusted counsel and advisor Attorney Walker, declined to pursue any type of malpractice or ethical complaint against Attorney Ross or Wiggin.

33. On information and belief, Attorney Walker – who had recommended to Gill that he retain Wiggin and Attorney Ross as his divorce counsel – had known previously about the conflict of interest issues and knew that, if Gill continued to investigate these issues, Gill would learn of Attorney Walker's and Devine Millimet's malpractice and malfeasance with regard to the divorce case. Attorney Walker did not want Gill to learn of these facts.

34. Most of the corruption involved in Gill's divorce came to light through the candid statements of his former counsel at Wiggin & Nourie, Attorney Sedgwick, who had been dismissed from the firm in the summer of 2008 following the termination of Wiggin & Nourie's representation of Gill. On information and belief, Attorney Sedgwick had been effectively "cleaved from the herd" by Attorneys Ross and Walker, based on the fact that she had been so vocal concerning her desire to expose the conflict of interest between Attorney Tober (Sarah Gill's divorce counsel) and Wiggin & Nourie and its shareholder Attorney Ross.

35. In September 2008, Attorney Sedgwick contacted Gill by letter and advised him among other things that Attorneys Ross and Tober, while ostensibly adversaries in the divorce

case, had in fact been working together to prolong the case and increase their receipt of legal fees. In her own words, Attorney Sedgwick – who had left Wiggin & Nourie and was seeking to represent Gill again in the divorce – claimed that "this time I won't have a partner [Attorney Ross] working for the other side and undermining my every move." She also made mention of an "undisclosed attorney" who had been guiding Attorney Tober from the beginning.

36. Attorney Sedgwick's claims were buttressed further in November 2011, two months later, when she was called to provide a deposition in the Wiggin & Nourie lawsuit. Though Attorney Sedgwick appeared for her deposition, she was upset, purported to fire her attorney, and the deposition did not go forward. However, Attorney Sedgwick did meet with Gill and his counsel and confirmed, among other things, that Attorneys Ross and Tober were working together rather than as adversaries; that a plan from the outset had been to delay the divorce case not only to increase fees to the lawyers but also to run through statutes of limitations on claims against the attorneys; and to position the case in front of a Marital Master and Judge who were more favorable to allowing these delays to continue.

37. Attorney Sedgwick's comments concerning the running of statutes of limitations appeared prescient, as described below, when the state Superior Court ultimately dismissed defendants from a subsequent malpractice suit brought by Gill on the basis that the statute of limitations had run on claims by a mere three days.

38. For these and other reasons, Gill reasonably believes that the only forum in which he can obtain any meaningful and unbiased redress of his grievances within New Hampshire is in the federal court.

Further Conspiracy to Damage MSI and Gill

39. In addition to the efforts above of Attorney Walker with respect to dissuading Gill

from looking further into the relationship of Attorneys Ross and Tober, Attorney Walker also sought to contain MSI and Gill by ostensibly aiding Gill in finding new divorce counsel subsequent to the departure of Wiggin & Nourie as Gill's counsel.

40. Through the close personal trust and confidence he had sought and obtained from Gill, Attorney Walker was able to steer him to other New Hampshire divorce attorneys, including Attorneys James J. Tenn of Tenn & Tenn, P.A.; Attorney R. David Depuy of McLane, Graf, Raulerson & Middleton, P.A.; and Attorney Timothy C. Coughlin of Coughlin, Rainboth, Murphy & Lown, P.A. On information and belief, these were attorneys who were either friends or close associates of Attorney Walker and would follow his instructions concerning the handling of the Gill divorce case.

41. At the time Wiggin & Nourie departed in June 2008, Gill's divorce case had already gone on for over a year. This divorce case continued for another four years, most of it with counsel for Gill which had been recommended by Gill's trusted advisor Attorney Walker. Not until Gill's retention of new divorce counsel who was not tied in any way to Attorney Walker did depositions begin in earnest in the matter, after which the matter was resolved.

42. The level of control of Attorney Walker over the conduct of his hand-picked divorce attorneys was significant. This is evidenced by, among other things, a draft motion in May 2009 from Attorney Tenn's office seeking to compel Gill's former wife to mediate the divorce case. Gill had been demanding for a while that his attorneys set up a mediation. A facsimile cover page to Gill was prepared with the draft motion, but a handwritten note indicated that Attorney Walker had directed Tenn & Tenn not to send it to Gill. Gill never saw the motion and only learned of it years later when he obtained access to his files from Tenn & Tenn.

43. On information and belief, Attorney Walker effectively managed Gill's divorce

counsel, purposely failing to advance a resolution of the divorce matter in an effort to obtain more legal fees for Devine Millimet and those attorneys picked by Attorney Walker as well as to fraudulently conceal from Gill the legal malpractice, conspiracy, and other wrongful conduct and to do so until the statute of limitations had expired.

44. In fact, this conspiracy organized and managed by Attorney Walker was successful in its efforts to keep Gill from learning the truth and from filing his claims against several of these attorneys until the statute of limitations had run out. Following Gill's filing of malpractice and other claims against these attorneys in May 2012 in the Rockingham Superior Court (state trial court), several of these attorneys were dismissed based on the expiration of the statute of limitations – including Attorneys James Tenn and R. David DePuy, of the Tenn & Tenn and McLane Graf firms, respectively, who were dismissed because the claims were filed three days too late.

45. On information and belief, this conspiracy, and Attorney Walker's efforts in conjunction with the other attorneys, was for the purpose of and in furtherance of efforts to cover up wrongdoing and to keep Gill and MSI from learning the truth. Eventually, these efforts were designed to disrupt and to shut off the funding required by Gill and MSI to continue efforts to uncover the truth. Attorney Walker determined to do this by prompting the Department, with whom he had close personal contact, to examine MSI and, eventually, threaten MSI with the loss of its license to operate, which would thereby quickly and effectively cut off the flow of monies to Gill.

Attorney Walker Leverages MSI with the Department

46. The Department, which licenses mortgage originators such as MSI to operate in New Hampshire, has regulatory oversight over MSI pursuant to RSA 397-A.

47. On information and belief, Attorney Walker of Devine Millimet used his self-admitted "strong relationships" with Department personnel, including then Commissioner Hildreth, to distract Gill from continuing to look into the actions of his and his wife's divorce and other counsel by prompting the Department to examine and audit MSI. The Department, and then Commissioner Hildreth, were only too eager to assist in this to distract attention from the unfolding issues surrounding the Department's lack of oversight of FRM and the personal conflict issues between FRM and Commissioner Hildreth, in particular.

48. That examination, prompted by Attorney Walker and with the assistance of the Department and in furtherance of the conspiracy, had its intended effect, distracting Gill from continuing to investigate the improprieties of his divorce counsel and resulting in fines and penalties for MSI as well as negative public exposure.

49. On July 23, 2008, the Department issued an Order to Show Cause and Cease and Desist Order, Case No. 08-223, alleging violations of, inter alia, RSA 397-A (the "Cease and Desist Order"). The Notice of Order was signed by then Department Commissioner Peter C. Hildreth, and it referenced a Statement of Allegations signed by Staff Attorney James Shepard. The Notice of Order and Statement of Allegations were released publicly, without notice to MSI, and in an effort to pressure MSI, and further distract Gill, by creating such negative public exposure that MSI would be forced to settle the allegations quickly without the benefit of being allowed to meaningfully oppose the charges.

50. On information and belief, Department Staff Attorney Shepard released these allegations to the public, without notice to MSI, on his last day working at the Department prior to his assuming duties as a hearing officer at the New Hampshire Department of Safety. The timing of this release was in furtherance of the Department's conspiracy with Attorney Walker

and was designed to prevent MSI from meaningfully rebutting the Statement of Allegations.

51. The Department's Statement of Allegations accomplished the goal of the conspiracy by, among other things, publicly claiming over twenty counts of incomplete records, twenty counts of failure to assist an examination, fourteen counts of fraud, fourteen counts of dishonest or unethical practices, and numerous other claims including failure to supervise and destruction of records. The relief requested by the Department included an unspecified amount of fines and administrative penalties, but it also sought an order for MSI to show cause why it should not lose its license with the Department – thereby shutting down MSI's entire business.

52. The shutting down of MSI was, in fact, a goal of the conspiracy between Attorney Walker, Devine Millimet, and the Department. Without the money provided by MSI's business, Gill would be unable to investigate and challenge the conduct of attorneys involved in his divorce case, thereby insulating Attorney Walker and others from potential liability. In addition, the Department's focusing attention on MSI was an effort to distract from public embarrassment over its own lapses in oversight, as well as undisclosed conflicts of interest between Commissioner Hildreth and a regulated entity which later turned out to have been one of the largest criminal "Ponzi" schemes in New Hampshire history.

53. Without admission by MSI of any allegations made or implied by the Department's Notice of Order and Statement of Allegations – and under the economic duress of losing its license and thereby its business – Gill and MSI determined to resolve the matter by the Consent Order. Pursuant to the Consent Order, MSI and Gill paid $400,000, one of the largest administrative penalties in the history of the Department . In addition, MSI was also required to conduct independent audits of its past and present business operations.

54. To assist in these independent audits, Attorney Walker recommended to MSI that

it retain CCR, LLP, a large regional accounting firm (later acquired by international accounting firm Grant Thornton LLP, the United States arm of international accounting firm of Grant Thornton International Ltd. Undisclosed to Gill was the fact that Attorney Walker's first cousin was the director of CCR's Audit Department. Steering MSI and Gill to CCR, through his personal, familial contacts at CCR, was part of the conspiracy by Attorney Walker and the Department to oversee and contain the actions of MSI and Gill.

The Implode Case – Conspiracy to Publicly Disclose MSI's Confidential Information

55. On information and belief, Attorney Walker, Devine Millimet, and the Department conspired and acted in concert against MSI with respect to other matters as well, including the disclosure of MSI's confidential information prohibited by statute.

56. During the summer of 2008, Attorney Walker, Devine Millimet, and the Department knew that the situation surrounding MSI was dire. The housing market had crashed, MSI was being examined by the Department and was being publicly accused of fraud, Gill was involved in a hugely costly divorce and was facing significant federal and state tax.

57. In July 2008, Attorney Stephen Tober, divorce counsel for Gill's former wife, had attempted to secure a $10,000,000.00 pre-judgment attachment against MSI, which would have effectively put MSI out of business. Gill's wife's counsel also wrote in July 2008 to the Department requesting MSI's confidential records, and that request was denied. MSI entered into the Consent Order with the Department in August 2008.

58. At this time, and apparently out of the blue, a confidential loan chart ("2007 Loan Chart") provided confidentiality to the Department during an audit appeared on the an internet web site, along with defamatory comments from an anonymous source, "Brianbattersby." At

this time, MSI was teetering on the brink of collapse from all of the legal fees it was incurring, from the housing market collapse, and now from the negative public attention MSI and Gill were attracting from the website postings and accusations of fraud, unfounded as they may have been.

59. As stated previously, Attorney Walker – MSI's chief outside counsel – received a copy of these defamatory and illegal postings at the latest on or about October 9, 2008; however, despite his obligations to his clients, he did not share a copy of the posting with MSI or Gill. In fact, almost two weeks later, MSI informed Attorney Walker that it had just learned of the Implode disclosures and defamatory postings.

60. On November 12, 2008, MSI filed a lawsuit in the New Hampshire State trial court (Rockingham County Superior Court) against that internet website, owned by Implode-Explode Heavy Industries, Inc. ("Implode"). The Implode web site also contained defamatory comments by an anonymous poster using the user name "Brianbattersby."

61. The 2007 Loan Chart was highly confidential and was only available within MSI to Gill and one or two other senior personnel. In connection with prior Department exams, it had been provided by MSI to the Department, and the fact that it found its way onto the internet and was made public highlights that its disclosure was not inadvertent and most likely was released by Department staff in violation of New Hampshire law which protects against the disclosure of information provided by licensees to the Department.

62. In its lawsuit against Implode for the wrongful disclosure of MSI's confidential information, MSI sought an injunction prohibiting Implode from republishing the confidential loan summary and the defamatory comments; ordering Implode to disclose the identity of the individual/entity that had provided the loan summary to Implode; ordering Implode to disclose the identity of Brianbattersby; and ordering Implode to produce all documents received from or

sent to the source of the loan summary.

63. Following the Superior Court's grant of an injunction on or about March 11, 2009, Implode appealed to the New Hampshire Supreme Court. On remand, with guidance from the Supreme Court, the trial court entered an "Order on Plaintiff's Motion for Summary Judgment" dated February 23, 2011. That decision provides two separate legal analyses, the first pertaining to the identity "Brianbattersby" and the second to the 2007 Loan Chart which was disseminated in violation of RSA 383: I 0-b (prohibiting disclosure by the Department to third parties seeking disclosure of another individual's or business' records):

With respect to Brianbattersby, the trial court ordered that:

> The Defendant is ordered to provide the Plaintiff with the identity of Brianbattersby within sixty days. The identification shall be in sufficient detail to enable the Plaintiff to locate this person.

With respect to the 2007 Loan Chart, the trial court ordered that:

> An analysis of the issue using the balancing test ordered by our Supreme Court leads this Court to conclude that a limited disclosure is warranted. The Court presumes that the Defendant has the ability to determine whether or not the provider of the 2007 Loan Chart was either an employee of the Plaintiff or an employee of the New Hampshire Banking Department. If the provider fits in one of these two categories, then his or her name must be disclosed so as not to reward them for unlawful conduct. However, if the provider has no connection to either the Plaintiff or the Banking Department then a disclosure will not be ordered. The Defendant shall have sixty days to determine if there is such a connection, and so notify the plaintiff.

64. Devine Millimet failed to inform MSI of the Superior Court's February 2011 Order, and MSI did not learn of it for five months (July 2011). MSI was not notified of the Superior Court's February 2011 Order until successor counsel in the Divorce Action advised Gill upon receiving the transitioned file from Devine Millimet upon the termination of Devine Millimet's representation of MSI. In spite of apparently unwittingly providing a copy of the February 2011 Order to MSI when Devine Millimet turned over the files to MSI, Attorney

Walker provided a memorandum for successor counsel dated July 28, 2011, which stated that the Implode Action was still pending. In fact, the Implode Action was not still pending but rather had been disposed of five months earlier.

65. Devine Millimet had a duty to timely inform MSI of the decision in the Implode Action and inform MSI of its options going forward. Devine Millimet breached its duty to timely inform its then client MSI of the February 2011 Order in the Implode Action, which resulted in MSI's loss of its appeal rights. MSI, and Gill, have been significantly harmed as a result of Devine Millimet's wrongdoing.

Failure to Investigate the Identity of "Brianbattersby" and the Source of the 2007 Loan Chart Leak

66. Pursuant to RSA 383:10-b and RSA 397-A:12, X, all records of investigations and reports of examinations by the Department are confidential, privileged and shall not be made public. As stated above, there were therefore only a few people that would legitimately have access to the leaked the 2007 Loan Chart in addition to the Department. Those individuals would be Gill, Attorney Walker, and other attorneys at Devine Millimet.

67. On information and belief, Attorney Walker and/or the Department publicly released, or actively participated in the public release, of this information in violation of law and in furtherance of their conspiracy described elsewhere herein.

68. MSI and Gill pressed Attorney Walker to take immediate action to discovery and stop the source of the information leak. On October 9, 2008, at MSI's and Gill's urging, Attorney Walker sent a letter to the Department Commissioner Robert Fleury ("Fleury") and a letter dated December 16, 2008 to Mary Jurta ("Jurta"), Director of Consumer Credit. In the letter to Jurta, Walker requested that the Department launch a formal investigation in order to determine how MSI's confidential financial information was obtained from the Department,

disclosed and posted on the Implode web site. Plaintiffs are unaware of any response provided by Fleury. Jurta responded in a letter dated December 22, 2008 as follows:

> While I understand your client's concerns, I do not believe that the information referenced was obtained from this office. The Banking Commission takes confidentiality very seriously. Breach of our confidentiality rules is grounds for dismissal and all new employees receive confidentiality training. If you have any indication that there was a breach in the Department, I look forward to hearing from you as soon as possible.

69. Attorney Walker and Devine Millimet failed to make any further inquiry with the Department on this matter, effectively letting it drop. On information and belief, this was based on the fact that vigorous and bona fide pursuit of this information would uncover the conspiracy between Devine Millimet and the Department and the fact that Attorney Walker and the Department were directly involved and acting in concert to release MSI's confidential information.

70. Gill and MSI continued to press Devine Millimet to follow up and determine the source of the public leak of its confidential information.

71. On or about November 25, 2008, Devine Millimet engaged the services of Pat Mason of The Mason Group, Inc., of Holliston, Massachusetts to investigate the identity and whereabouts of "Brian Battersby." On or about January 9, 2009, Pat Mason informed Attorney Walker via e-mail correspondence of three contact telephone numbers (mobile, work and home) for a Brian Battersby ("Battersby") who was then living at 891 South Hemlock Road, Charlestown, New Hampshire and working as a loan originator.

72. On January 9, 2009, and without informing MSI or Gill, Attorney Walker sent a note via facsimile to Brian Battersby of Charlestown, New Hampshire, asking Battersby to contact Devine Millimet to let Walker know when Battersby would be in Manchester, New Hampshire, presumably for a meeting.

73. On or about February 2, 2009, a subpoena was served on Battersby. Thereafter, the deposition was cancelled by Devine Millimet. Battersby was again served with a subpoena in September 2010 and was deposed an October 5, 2010. Despite specific instructions from Gill that he wanted to be present on behalf of MSI at any depositions relating to this matter, Devine Millimet failed to inform Gill that it had located Battersby and that the deposition would go forward.

74. Battersby testified at the October 5, 2010 deposition that he began working as a loan originator at Proficio Mortgage Ventures, LLC ("Proficio Mortgage") in Claremont, New Hampshire, in September 2008 and that he registered with the State of New Hampshire online at that time as a loan originator.

75. On or about August 26, 2009, Proficio Mortgage had applied to the Department for a Claremont, New Hampshire branch license, which remained pending when Proficio Mortgage was charged with several violations of Department regulations associated with operating without a valid license.

76. At the Battersby deposition, Devine Millimet's efforts were perfunctory at best, and its attorneys failed to probe or question inconsistencies and irregularities of the testimony of Battersby at his October 5, 2010 deposition. For example, Battersby testified that he had lost his wallet recently while in Canada. Coincidentally, an article previously published by the Nashua Telegraph newspaper – purporting to interview the "Brianbattersby" who leaked MSI's information to the Implode website and defamed Gill – reported that the anonymous person whose internet moniker was "Brianbattersby" was an "amateur astronomer" living in Canada. Devine Millimet did not follow up on this seeming "coincidence" between the testimony they elicited and the news report of an interview with the person who leaked MSI's information.

77. Based upon a superficial inquiry with the Department and a superficial deposition of Battersby, Attorney Walker and Devine Millimet summarily determined that they had not found the correct "Brianbattersby" who posted the defamatory comments on the Implode web site. The determination was made that the man deposed was not the correct "Brianbattersby" despite the fact that he was, and is, the only Brian Battersby that lives in New Hampshire – and also happens to be a registered loan originator in New Hampshire at a company, Proficio Mortgage.

78. At this time, Proficio Mortgage was simultaneously positioned as a Respondent in an open case pending before the Department. On information and belief, shortly after the deposition of Brian Battersby by Attorney Walker and Devine Millimet, the charges against Battersby and Proficio Mortgage were dismissed by the Department for violations that in all other instances would have resulted in significant suspensions and fines. Despite the serious allegations of misconduct by the Department against Proficio Mortgage and its employee Brian Battersby, no action was taken against them by the Department following Brian Battersby's testimony in the Implode Action.

79. MSI's counsel, Attorney Jonathan Friedmann of the Boston law firm Rudolph Friedmann LLP (and currently also serving as a Hearing Officer at the Massachusetts Board of Bar Overseers), opined that, in his experience on banking matters, he had never seen an individual or entity like Proficio Mortgage or Brian Battersby get a consent order issued against them without penalty. Attorney Friedman also noted the strangeness of this given that an issue had arisen with the Department concerning the leak of confidential, protected information by someone with the internet moniker "Brianbattersby," and he noted that the Department's failure to investigate was an abdication of its authority.

80. In a sworn affidavit submitted in the Implode Action in accordance with an order of February 2011 by the trial court, Aaron Krowne ("Krowne"), Founder and Chief Executive Officer of Implode, provided the IP address for the comments posted to the Implode web site on April 25, 2011.

81. In May 2011, again at the urging of MSI and Gill, Devine Millimet issued a subpoena for the information from the internet service provider associated with the IP addresses provided by Krowne-Broadview Networks, Inc. ("Broadview"), approximately a year and one half after the initial petition was filed in the Implode Action. Broadview provided answers to the subpoena questions but no deposition of Broadview was taken by Devine Millimet.

82. At no time did Devine Millimet investigate the IP addresses or the two names (Dennis Craig and Dave Mandara) provided by Broadview in response to the subpoena. In fact, the IP addresses provided by Broadview belonged to Messrs. Craig and Mandara, who were later determined to be connected with a competitor of MSI competitor in the mortgage industry, East-West Mortgage, the parent company of website "www.ISoldMyHouse.com." On information and belief, ISoldMyHouse.com (also a competitor of MSI) was also being investigated at this time by the Department .

83. Despite the seriousness of the leak of confidential information, the fact that it violated New Hampshire law, and the fact that Devine Millimet had this information available to follow up, Devine Millimet failed to investigate further, failed to take any further action on information provided by Broadview or Krowne, and failed to disclose these facts to its clients, MSI or Gill.

1. In furtherance of its conspiracy, Devine Millimet did not undertake to zealously represent its clients by pursuing the information available to uncover the source of the

information leak, and Devine Millimet did this to protect its conspiracy with the Department and to continue the covering up of its own involvement in the wrongdoing. Devine Millimet failed to properly investigate the identity of "Brianbattersby" both prior to and after the Superior Court's February 2011 Order, and it clearly failed to communicate with Gill and MSI the results of the private investigation into the location of Battersby in January 2009. MSI and Gill were never informed that Devine Millimet was in communication with Battersby and that Devine Millimet had conducted his deposition on October 5, 2010.

2. Devine Millimet's deliberate and intentional failings to pursue this information is significant. Gill had repeatedly requested that contact be made with Battersby and that a meeting and/or deposition be held of Battersby upon locating him. Gill had also emphatically requested that he be present at any meeting or deposition, and, in a letter to Attorney Walker dated January 28, 2009, Gill addressed the urgent need to make contact with Battersby as a matter of survival for MSI in a letter to Walker dated January 28, 2009.

3. In this letter, Gill specifically inquired whether a subpoena had been served on Battersby, and he specifically instructed Attorney Walker to arrange a meeting with Battersby with Gill present. In furtherance of the conspiracy, Attorney Walker failed to communicate to his client that he had in fact located Battersby, had a subpoena served and was in the process of arranging a meeting. Attorney Walker further failed to include his client in the meetings, depositions or discussions with Battersby at any time during the pendency of the Implode Action.

4. MSI's damages caused by the release of the 2007 Loan Chart were significant, and MSI and Gill have suffered irreparable harm as the result of the unlawful posting of the 2007 Loan Chart on Implode's website. Gill suffered irreparable harm as a result of the false and

defamatory comments posted by "Brianbattersby" on the Implode web site, including the statements that Gill "was caught for fraud in 2002" and that he "bought his way out."

5. MSI was informed by multiple lenders with whom it did business that they would no longer provide loans through MSI, and MSI experienced a measurable drop in customers based on the unlawfully disclosed information and defamatory comments found on the Implode web site in 2008 and 2009. Further, MSI was harmed by the Implode postings by Brianbattersby and 2007 Loan Chart posting in that there was an exodus of MSI loan originators following the postings, and there was also a steep decline in MSI loan originators in 2008 (even accounting for the overall fall in the housing market).

6. Notwithstanding the February 2011 Order, the true identity of "Brianbattersby" has not been officially disclosed. On information and belief, however, MSI and Gill believe that the Brian Battersby deposed by Devine Millimet – without any prior notice to its clients MSI and Gill – is or knows the true source of the leak of MSI's confidential information. Devine Millimet did not press for this information, however, because the trail would have lead back to itself and the Department, as well as the conspiracy in which both were involved.

Conspiracy to Prompt MSI's Violation of "Do Not Call" Registry

7. In or around Fall 2008, Gill asked that Devine Millimet provide a legal analysis regarding the "survey" exception to the National Do Not Call Registry (the "DNC Registry") for use by MSI in its telemarketing surveys. In this regard, Gill, on behalf of MSI, inquired as to how MSI could craft its telemarketing activities so as to comply with the DNC Registry's commands.

8. In or around February 2009, Devine Millimet, and Walker in particular, advised Gill that MSI's telemarketers could legitimately place calls to persons listed in the DNC Registry

for the purpose of conducting a survey and not run afoul of the DNC Registry, or of New Hampshire's telemarketing rules. Devine Millimet prepared an internal memorandum, dated February 9, 2009, indicating that telephone surveyors do not fall within the definition of "telemarketer" under federal law and are permitted to call persons listed on the DNC Registry, so long as the survey is not a disguised sales pitch. Devine Millimet provided MSI with a copy of this memorandum, leading MSI to believe that its current practices concerning its surveys were legally permissible. Relying upon Devine Millimet's legal advice and analysis, MSI conducted its telemarketing consistent with Devine Millimet's recommendations.

9. Thereafter, MSI requested that Devine Millimet, and Walker in particular, provide a legal analysis as to what sort of information MSI's telemarketers could provide to callers without having to be licensed loan originators in accordance with RSA 397-A:3, III.

10. On information and belief, Devine Millimet knew that its advice concerning the survey exception to the DNC Registry was false and incorrect but that MSI would rely on this in its marketing plans going forward. This was in furtherance of Devine Millimet's conspiracy with the Department, which created yet another issue to distract public attention from the Department with regard to news concerning the Department's inaction with respect to FRM (and the personal conflicts between FRM and the Commissioner) and which would eventually also provided Devine Millimet not only with additional legal fees to fix the very problem it had created but also to put additional pressure on Gill in connection with the issues he was encountering in his divorce case.

11. Attorney Friedmann of Rudolph Friedmann LLP reviewed the advice provided by Devine Millimet concerning the ability to conduct surveys, and he concluded in no uncertain terms that he believed Devine Millimet gave MSI the wrong advice. Specifically, Devine

Millimet had advised MSI that it could speak with a consumer, and Attorney Friedman did not believe that the intent or the letter of the law allowed this.

12. More disturbing to MSI was Attorney Friedmann's opinion that MSI had been overcharged by Devine Millimet in arriving at its faulty legal opinion regarding the surveys and the fact that Devine Millimet had not provided a methodology for how surveys might be properly conducted. Attorney Friedmann's firm was able to complete this work, and do it correctly, for a fraction of the cost charged by Devine Millimet purportedly for the same work.

13. Beginning on or about July 20, 2009, MSI was examined by the Department.

14. On or about May 27, 2010, the Department issued a Report of Examination (the "Report"), in which it made certain observations relative to, among other things, MSI's telemarketing activities. In its Report, the Department concluded that MSI, by its use of the telemarketing practices endorsed by Devine Millimet, had violated RSA 397-A:3, III, employing unlicensed loan originators for the purpose of lead generation.

15. MSI timely responded to the Report, noting that its telemarketers were not licensed loan originators and were not engaging in any of the activities regularly undertaken by licensed loan originators. Ignoring MSI's response, the Department, by letter dated July 8, 2010, stated that no changes to its Report were warranted, and that "[t]he observations in the report are significant enough that we are referring the file to our attorney for evaluation and possible enforcement action."

16. Discovery in a state court lawsuit brought subsequently by MSI and Gill against Devine Millimet, Attorney Walker, and others, has revealed, among other things, internal correspondence at Devine Millimet in which one of the attorneys asked about the status of the "NH telemarketing issue" and that the junior attorney had been told by Attorney Walker to "hold

off" on further work. The junior attorney states to Attorney Walker, "I haven't touched it since but I am starting to get worried."

17. In or about February or March 2011, Attorney Walker and the Department furthered their conspiracy concerning MSI by discussing and drafting a proposed Consent Order. Under a cover e-mail dated April 11, 2011, Raef J. Granger, an attorney in the Department's Legal Division, forwarded a draft of the Consent Order to Attorney Walker, noting that it was "[p]ursuant to our phone conference." Not coincidentally, the Consent Order concerned the survey practices at MSI, which Devine Millimet had previously approved, and demanded that MSI cease and desist its survey practice, "pay an administrative fine of $57,500 for one (1) count each for employing twenty-three (23) mortgage loan originators," and refund commissions paid on three loans.

18. The draft Consent Order was never provided to MSI or Gill. On information and belief, this draft Consent Order was in furtherance of the cover up concerning Attorney Walker's and the Department's conspiracy concerning MSI and Gill.

19. In early 2011, MSI asked Devine Millimet again to confirm that its survey practices were consistent with law and did not violate the DNC Registry requirements. Again, Devine Millimet confirmed orally that the practices were permissible, as outlined in the February 2009 memorandum on this subject.

20. In March 2011, and without the knowledge of MSI or Gill, Devine Millimet internally updated its previous memorandum from February 2009 at Attorney Walker's direction. The redrafted memorandum – which was never shared with MSI and only came to light during a subsequent state court action – was purportedly prepared by the same junior attorney at Devine Millimet who prepared the previous version more than two years earlier.

21. The redraft of the internal memorandum was amended to essentially cover up the earlier advice Devine Millimet had previously given to MSI. The March 2011 memorandum states "[p]reviously, we provided [MSI] with a memo cautioning them against this practice [surveys] and you [Attorney Walker] requested that I update that memorandum." This was clearly contradictory to the previous memorandum from February 2009 and oral statements made to MSI by Devine Millimet that the survey procedures were proper.

22. On information and belief, this redraft of the internal memorandum – ordered by Attorney Walker and not shared with MSI – was an attempt to "paper" the firm's file to cover up the fact that it had earlier advised MSI that it could conduct surveys without running afoul of the federal DNC Registry. This effort to cover up its previous advice was a result, in part, of the Department's audit the previous year essentially finding that Devine Millimet's advice had been erroneous.

Exposing the Conspiracy, Devine Millimet Seeks Its Own Release from Liability, and MSI Is Subjected to Another Department Examination

23. At this same time in the summer of 2011, the relationship between Attorney Walker and Gill declined precipitously. Gill continued his inquiries into the conduct of Attorney Walker and Devine Millimet with respect to, among other things, the continuing examinations and harassment from the Department.

24. In June 2011, Attorney Walker threatened Gill concerning MSI's survey practices and the fact that the Department may look into these. Unbeknownst to Gill, Attorney Walker had, a few months before, been in contact with the Department concerning these practices, and, as alleged above, had worked with the Department to draft a Consent Order concerning these practices, which Attorney Walker had not shared with Gill.

25. In late July 2011, when it was clear that Devine Millimet would withdraw from

representing MSI and Gill, MSI and Gill demanded that Devine Millimet finish its work on certain pressing matters (including tax matters) based on MSI's and Gill's previous payments to Devine Millimet of millions of dollars. In response, Attorney Walker stated that Devine Millimet would continue a limited representation on outstanding tax matters only if certain conditions were met – one of which was "[a] full release from any and all claims that were raised or could be raised based on the recitations in [Gill's] e-mail dated June 28, 2011, together with a non-disclosure and non-disparagement covenant by both parties." Clearly, Devine Millimet was attempting to leverage its clients' needs for the conclusion of legal work on a release of its own liability. Such a demand is, at the very least, ethically questionable.

26. Based on Attorney Walker's threats concerning the Department – certain senior personnel with which Attorney Walker enjoyed an admittedly strong relationship – Gill in fact predicted that Attorney Walker and the Department would again contrive to distract him and cause damage to MSI by calling another examination by the Department.

27. Shortly thereafter, in or about early August 2011, Gill's prediction came true. The Department showed up at the doors of MSI for an unscheduled examination. During this audit, the Department personnel rifled through MSI's offices and harassed MSI's employees. This audit caused significant disruption to MSI's business. Despite the thoroughness of the Department's examination, no "Exit Interview" was given by the Department, contrary to the Department's normal procedures.

28. On information and belief, this examination was in furtherance of the conspiracy and designed to distract Gill, continue the attempted cover up of the Department's and Attorney Walker's previous wrongdoing, and to injure MSI so that the source of Gill's funds to uncover the truth and prosecute the wrongdoing would be removed.

29. At or about the time of the Department's examination in early August 2011, and following the termination of MSI's engagement of Attorney Walker and Devine Millimet, new counsel for MSI and Gill began efforts to reopen the issues concerning the leak of MSI's confidential information in 2008, which eventually was put on the Implode internet website.

30. Counsel for Gill, in connection with his divorce, and counsel for MSI both contacted the Department and made a "Right to Know" request pursuant to RSA c. 91-A. Counsel requested information concerning the improperly disclosed "Loan Chart" as well as additional information concerning the Implode action which MSI had filed. Importantly, MSI and Gill renewed their earlier requests, through their new counsel, for a formal investigation by the Department into the source of the information leak.

31. The Department, now caught without the cover of its co-conspirator Devine Millimet, purported to "expedite" MSI's and Gill's request for information but, in fact, delayed and stalled providing relevant information and, importantly, renewing the investigation into the leak of information.

32. On August 30, 2011, a meeting was held at the Department's office in Concord, New Hampshire. In attendance were Gill and his divorce counsel; counsel for MSI (Attorneys Friedmann and Joseph W. Worthen, both of Rudolph Friedmann LLP in Boston, Massachusetts); Rebekah Becker from Department; and Assistant Attorney General Glenn A. Perlow (now the Commissioner of the Department). According to Attorney Friedmann, now a Hearing Officer with the Massachusetts Board of Bar Overseers, the meeting was contentious from the start, with Assistant Attorney General (now Commissioner) Perlow telling Gill and MSI to "sue us [the Department]." Attorney Friedman has subsequently opined that he found the Department's contentiousness and the admonition from the Assistant Attorney General to "sue us" as being

"very strange."

33. At the August 30, 2011, meeting, counsel for Gill and MSI also informed the Department again of an additional avenue to determine the identity of "Brianbattersby," the unidentified person who leaked the 2007 Loan Chart, which included pursuing a lead with East West Mortgage. Without explanation, the Department did not follow up on the lead provided by Gill and MSI.

34. The Department's behavior in response to MSI's and Gill's requests for information and for further investigation can only be described as obstructionist. The Department has thwarted and stymied MSI's and Gill's repeated attempts to uncover the source of the leak and, in particular, to determine whether the source of the leak was someone from the Department, or whether the source was Devine Millimet, and Walker in particular.

35. The Department's obstructionist behavior is suspicious to say the least, especially considering the circumstances surrounding the posting of the 2007 Loan Chart and defamatory comments by "Brianbattersby" posted on the Implode web site. Upon information and belief, this was in furtherance of an ongoing conspiracy involving, among others, Attorney Walker and Attorney Stephen L. Tober (divorce counsel to Gill's former wife) to conceal the intentional destruction of key records, to churn legal bills, and to prolong the Divorce Action in an attempt to cause the statute of limitations to run on claims against certain attorneys involved in the divorce. Despite the conspiracy, MSI and Gill pushed on and continued to press Attorney Walker and his other attorneys to discover how and why records had been allegedly destroyed in the Divorce Action.

36. In January 2012, MSI received a voluminous, forty-five page proposed Consent Order from the Department in relation to the above-referenced August 2011 examination. In this

newest proposed Consent Order, the Department takes the position, among other things, that MSI and Gill violated both Federal and New Hampshire law in that MSI's surveys were actually a disguised solicitation of business to a consumer listed on the DNC Registry – coincidentally, one of the areas discussed in Devine Millimet's revised March 2011 memorandum concerning the survey practices which was not shared with MSI.

37. In the draft Consent Order, the Department also takes the position that MSI's telemarketing scripts are violative of New Hampshire law. MSI's survey and telemarketing scripts were vetted and scripted according to the legal analysis provided by Devine Millimet in February 2009. The Department's proposed January 2012 draft Consent Order seeks significant penalties for these and other alleged violations.

1. Following the issuance of the January 2012 draft Consent Order, the Department went through longs periods of time without follow up or contact with MSI or its counsel concerning the draft Consent Order. Nothing has come of the proposed 2012 Consent Order, and there has been no communication with the Department on this matter for approximately a year.

2. On information and belief, the Department interposed this draft Consent Order in January 2012 specifically to impugn and harass MSI and in further efforts to cover up its ongoing conspiracy. That the Department never followed up and never closed out this draft Consent Order demonstrates the artifice of the Order itself.

The Department's Eight-Year Investigation: The Stewart Case

3. In June 2002, MSI assisted Shawn and Karen Stewart (the "Stewarts") in closing a residential loan. The Stewarts had initially desired a fixed-rate residential loan but, due to a previous bankruptcy, ultimately entered into a loan with an adjustable rate mortgage (ARM).

4. In July 2002, the Stewarts made a complaint with the New Hampshire Attorney

General's Office concerning their residential loan. Their complaint was referred to the Department. The nature of the Stewart's complaint was that, while MSI had disclosed to them that their loan would be an ARM rather than the initial fixed rate they hoped to obtain but could not due to other financial issues, the disclosures were made too close to the closing date of the loan and that they were forced to enter into the ARM loan because they did not want to lose a down payment already made.

5. In September 2002, MSI responded and explained that disclosures concerning their ARM loan were been provided to the Stewarts well in advance of to closing their loan. The terms of the loan were provided to the Stewarts verbally, by mail and by facsimile.

6. MSI reasonably believed that this matter had been concluded. However, on August 8, 2008 – contemporaneous with the timing of the Commissioner Hildreth's public disclosure of the cease and desist order and days before the 2008 Consent Order – the Department's Consumer Credit Division resurrected the Stewart's nearly six-year old complaint. MSI responded with the same information concerning the fact that full disclosure had been provided to the Stewarts.

7. On November 16, 2010, the Department's Consumer Credit Division again contacted MSI, through its counsel, informing MSI that the Stewart's complaint was "still outstanding."

8. On January 13, 2011, the Department's Consumer Credit Division again contacted MSI, through its counsel, informing MSI that the matter was still "outstanding" and asking to discuss a resolution of the matter.

9. Despite the years of harassment on this matter by the Department, and MSI's repeated proof that the disclosures were properly made to the Stewarts, the Department

maintains this as an "outstanding" claim to be resolved.

The Department's Enabling Statutes Are Unconstitutionally Vague and Overbroad, and Department Has Promulgated No Regulations Providing Guidance

10. The Department licenses and regulates New Hampshire mortgage originators, such as MSI, pursuant to statutory Chapter 397-A:1 et seq.

11. The statutes under which the Department oversees licensees, however, are unconstitutionally overbroad, vague, and provide no guidance to licensees at to the limits, if any, of the power granted to the Department by the legislature. For example, the record-keeping statute requires in part as follows:

> The licensee shall maintain such records as will enable the Department to determine whether the licensee's business is in compliance with the provisions of this chapter and the rules adopted pursuant to it.

RSA 397-A:11. Significantly, the Department has promulgated no "rules" pursuant to this authority and has given no guidance as to which records a licensee must maintain in order to avoid violation of the law.

12. By way of another example, the authorizing statute allowing for the Department to conduct examinations of licensees allows in part as follows:

> The banking Department may examine the business affairs of any licensee or any other person, whether licensed or not, as it deems necessary to determine compliance with this chapter and the rules adopted pursuant to it . . . .

RSA 397-A:12. As with Section 11 – and indeed all of the sections under RSA 397:A – the Department has provided no regulations or guidance pursuant to his authority and has given no guidance as to the limits, if any, of the examination process. A licensee is therefore left with no rights or ability to determine what is fairly subject to the Department's examination and what is not.

13. On information and belief, the Department's utter failure to provide any guidance

with respect to its authorizing statutes, including the record-keeping and examination statutes, is deliberate and is an attempt to keep the Department's authority – and its concordant power – plenary with respect to its licensees.

14. The Department's failure to provide guidance in the form of regulations, with appropriate notice and comment procedures as set forth in the New Hampshire Administrative Procedure Act (RSA 541-A) is willful as well as arbitrary and capricious. Failure to properly provide notice of what constitutes a violation of an authorizing statute – other than simply stating that compliance to any administrative directive, no matter how broad, is required – is a violation of procedural and substantive due process under the United States and New Hampshire Constitutions.

The Department's Abuses During the 2013 Audit

15. For almost a year, MSI heard nothing from the Department with regard to the draft consent order.

16. On March 4, 2013, a team of five Department auditors arrived, unannounced, at MSI's main office in Plaistow and at its office in Somersworth.

17. In a demand letter hand delivered to MSI by Bank Examiner Sarah Lobdell, a copy of which is attached hereto as Exhibit A, MSI was informed that, pursuant to NH RSA 397-A:12, MSI "ha[d] been selected for examination of its licensed Mortgage Broker activity in the State of New Hampshire." The scope of the examination, according to the demand letter, was to "consist of a review of [MSI's] loan files originated, funded, closed, denied, withdrawn, canceled, or serviced in the past 18 months," and would also "include a review of foreclosures."

18. The scope of the Department's stated audit expanded, from the outset, beyond the purported limited audit stated in its demand letter. The Department's examiners demanded that

shred bins, used in MSI's offices to comply with confidentiality laws and for the purpose of maintaining discarded but confidential information concerning customers, be unlocked. The contents of those shred bins were reviewed by the examiners.

19. The Department's demand letter also contained a "Document Request List," comprised of thirty (30) requests, with additional subparts, for documents and further information on everything from MSI's organizational chart to copies of fourteen (14) types of policies and procedures to information about litigation currently involving the company. A copy of this list is included in the attached demand letter at Exh. A.

20. Though incredulous regarding the breadth of the Department's audit and the fact that its thirty categories of information in its demand letter appeared on their face to contradict the stated limited scope of the audit in the Department's March 4, 2013 cover letter, MSI's senior personnel worked diligently to comply with and provide the information requested.

21. On the first day of the audit, March 4, 2013, the examiners had commandeered a large conference room in MSI's Plaistow office, where they were reviewing all of the information they had demanded, including the contents of the aforesaid shred bins, MSI's financial and payroll information, and confidential information on MSI's customers. Promptly at 4:00 p.m. that day, the examiners left the facility without informing senior personnel and without making any attempt to secure this information or the conference room.

22. In fact, the conference room doors do not lock, and that room is used by evening employees for meals and other gatherings. The access to the room is also open to customers and others who walk into the main reception area of MSI's Plaistow office, which put the sensitive information left by the Department examiners in that room at risk of disclosure to unauthorized persons.

23. Employees informed MSI's operations director about this in the evening, and the information was allowed to be secured. When confronted with this issue the following morning upon their return, the Department examiners expressed that they saw no harm in what they had done, though they agreed that such a breach of confidentiality requirements, if committed by MSI personnel, would have been an offense which was citable by the Department itself.

24. On March 7, 2013 and again on March 13, 2013, MSI's president brought this to the attention of the Department by means of e-mail messages. *See* attached Exhibits B and C. Those e-mails were forwarded to Commissioner Ronald A. Wilbur who, at that time, was listed on the Department website as the Commissioner. Later that same day, the Department website was changed to reflect that the name of the new Commissioner Glenn A. Perlow, who was formerly the Department's general counsel and who had once told MSI to "sue" the Commissioner himself and the State of New Hampshire Banking Department in response to MSI's requests for information concerning the release of MSI's confidential information.

25. More than ten days later, on March 18, 2013, Commissioner Perlow finally responded to MSI's complaint concerning the examiners' mistreatment of MSI's confidential information, stating "[p]reliminarily, we have been unable to substantiate your allegation that the examiners failed to safeguard the documents at issue in a manner consistent with standard operating procedures and prior experience conducting examinations at [MSI's] Plaistow office location." *See* attached Exhibit D. The Commissioner's letter is belied by the statements of his own examiners to MSI personnel discussed above, and it constitutes a further attempt to harass MSI and to dissuade MSI from continuing to discover evidence concerning the Department's abuses. MSI's response to the Commissioner's letter is attached as Exhibit I.

26. Among a string of overbroad and unreasonable requests for information, the

Department's most egregious request is its verbal demand, made on March 11, 2013 in a phone call, for MSI to produce all of its electronic mail communications for the past six (6) months. MSI informed the Department that it has over 100 employees and that such a request would take significant time to compile, as much of this information must be obtained from MSI's third-party offsite secure e-mail hosting vendor. In addition, MSI informed the Department that a thorough review of these files would first need to be performed in order to cull out records protected from disclosure by the attorney-client privilege, work product doctrine, and other applicable privileges. *See* attached Exhibit E.

27. The Department's response to these concerns was first to state that (a) this is a routine request with which other licensees such as MSI routinely comply; (b) the Department was within its rights to demand eighteen (18) months worth of electronic mail and that only six months was somehow more lenient; and (c) that internal Department counsel would be consulted to determine the privilege issue. Further, the Department declined to articulate specifically what it was searching for in the virtual sea of information it was now seeking from MSI or to articulate how this related to its proper auditing and examination functions, other than to say that such information would assist it in determining that MSI was complying with applicable law. *See* attached Exhibit F.

28. Due to the sweeping scope and compliance timing of the demand made by the Department and the fact that the Department had now clearly gone far beyond any statutory or constitutional mandate in what amounted to an open-ended "fishing" expedition into MSI's files, MSI determined that it needed to retain outside counsel to assist. In a subsequent call between MSI's personnel, its outside counsel, and the Department's in-house counsel and senior staff, the Department informed MSI that failure to provide the requested electronic mail messages would

put MSI's license to operate – and thereby its entire business – "in jeopardy." *See* attached Exhibits G and H.

29. Under duress and the threat of losing its business, MSI initially began the monumental process of gathering its e-mail communications (while reserving its rights) for the four months identified by the Department. MSI anticipated that an appropriate review of this information for attorney-client privilege would take a significant amount of time. This amount of information is overbroad, unduly burdensome on a licensee such as MSI, and exceeds the legitimate needs of the Department, as well as its constitutional and statutory authority.

30. On March 25, 2013, the Department, through its General Counsel, forwarded correspondence purporting to support its authority for such a broad amount of information – in essence, what the Department believes is its authority to allow a naked fishing expedition through over a million pages of MSI's information. *See* attached Exhibit J.

31. On April 2, 2013, the Department, through its General Counsel, made additional demands concerning the e-mail production, with no mention of any other deficiencies in the three-week examination it had just concluded of MSI. *See* attached Exhibit K. In Department's counsel's letter, the Department made demand for further information concerning the status of the email production and review – despite the fact that Department had already been made aware that obtaining the emails from the outside vendor, and the review of those emails, would take significant time.

32. Despite having been told that obtaining the emails and review of those emails would take significant time, Department demanded further information concerning the production and threatened that, if such information was not provided by close of business today, April 3, 2013, such "failure to produce information and documents described above . . . may

result in a formal public action, including but not limited to subpoenas to [MSI] or the [company's third-party secure email vendor], show cause-order, or possibly a ***temporary license suspension***" (emphasis supplied).

33. The Department has no basis to make such threats, given that MSI has endeavored to fully cooperate with what has become a far-reaching, free-range examination with no defined purpose. It has become, in essence, a desperate search for something for the Department to hold against MSI.

34. Should the Department carry through on its threats, MSI could face today the possibility that it would temporarily lose its license. Such a threat, if brought to fruition, would irreparably harm MSI, its customers, and its over 100 employees.

35. With full reservation of its rights, MSI has, at all times, cooperated fully with the audit commenced by the Department on March 4, 2013.

Notification of Inspection from the New Hampshire Department of Labor

36. Two weeks to the day following the commencement of the Department's 2013 Audit, and after the increasingly unreasonable demands of the Department for vast and unspecified amounts of MSI's electronic information and MSI's initial questioning of that demand, MSI received a Notification of Inspection, dated March 18, 2013, from the New Hampshire Department of Labor ("NH DOL").

37. When the Notification was delivered to MSI's Nashua office on March 18, 2013, MSI personnel were informed that the DOL had a question concerning why commissioned-only loan originators did not have time cards.

38. In its entire history of more than twenty years, MSI had never received a

Notification of Inspection from the DOL or been reviewed concerning how it compensated, or accounted for the time of, its employees.

39. In its Notification of Inspection, the DOL demanded production on March 27, 2013 (less than ten days from receipt of the Notification) of several employment-related documents, including one year's worth of payroll records and time cards among other records. It is beyond coincidence that these are some of the same records which the Department had, just the previous week, asked MSI to produce in connection with its banking audit.

40. On information and belief, the Department used the opportunity of its audit to contact the NH DOL to prompt the Notification of Inspection, in an effort to put further pressure on MSI to comply with the Department's unreasonable an unconstitutional demands for information and in a further effort to harass MSI and to dissuade MSI from pursuing information concerning the conspiracy between the Department and MSI's former counsel, Devine Millimet.

COUNT I
(Violation of 42 U.S.C. § 1983)

41. Plaintiffs incorporate all previous paragraphs as if fully set forth herein.

42. The Defendants subjected the Plaintiff to conduct occurring under the color of state law, to wit, conducting an audit of plaintiff's operations.

43. In conducting the audit against MSI, the Defendants deprived the Plaintiff of rights, privileges, and immunities guaranteed under federal law and the US Constitution, including, but not limited to, disparity of treatment, overreaching its authority in conducting the audit, and otherwise far exceeding the scope of a what a reasonable audit should be.

44. The Defendants acted under color of statute by their access exercise of power conferred under state law to conduct audits.

45. MSI has been deprived of its constitutional and/or federal statutory rights, including, its rights under the commerce clause of the Federal Constitution. Defendant's actions in conducting this onerous audit has threatened the very existence of MSI and its ability to conduct business which includes business in multiple states.

46. As a result of this conduct, Plaintiffs have been damaged, including, but not limited to, lost wages, damage to reputation, and pain and suffering. Plaintiffs have further been damaged because Defendant's conduct was reckless, Inc. callously indifferent to Plaintiffs' protected rights, and/or was motivated by an evil intent, and are therefore entitled to punitive damages.

COUNT II
(Violation of U.S. Constitution, 14th Amendment – Equal Protection)

47. Plaintiffs incorporate all previous paragraphs of as if fully set forth herein.

48. The Defendants have treated MSI unequally by far exceeding any reasonable scope of the audit as to MSI as compared to any similarly situated company such as MSI.

49. MSI has been intentionally treated differently by the Defendantfrom other mortgage companies similarly situated, and there is no rational basis for this difference in treatment (the so-called "class–of–one").

50. Gill has been intentionally treated differently by virtue of the conspiracy which singled him out from others similarly situated, and there is no rational basis for this difference in treatment (the so-called "class-of-one").

51. As a result of this disparate treatment, MSI has suffered damages including business interruption, and damage to its business reputation.

COUNT III
(Violation of U.S. Constitution, 14th Amendment – Due Process)

52. Plaintiffs incorporate all previous paragraphs as if fully set forth herein.

53. The Defendants have deprived MSI of due process by, among other things, failing to provide adequate notice of the scope and duration of its examination as well as the allowable scope of its authority to require record-keeping by licensees such as MSI.

54. The Defendants have further failed to reasonably follow its own regulations with regard to the scope and parameters of its audit of MSI.

55. The Defendants have deprived Gill of due process by, among other things, engaging in a conspiracy with law firm Devine Millimet to dissuade Gill from taking certain actions and from learning the truth about certain wrongdoing.

56. As a proximate result, Plaintiffs have suffered and continues to suffer damages including without limitation business interruption and damages to reputation.

COUNT IV
(Civil Conspiracy)

57. Plaintiffs incorporate all previous paragraphs as if fully set forth herein.

58. The Defendants have conspired with Attorney Alexander Walker, Jr. and the firm of Devine Millimet to deprive Plaintiffs of their rights and in furtherance of the Defendant's own goals to divert attention away from the highly public and embarrassing disclosures concerning their lack of oversight of FRM, which lead to approximately $20 million in losses for New Hampshire investors.

59. The Defendant's conspiring with Devine Millimet, as discussed above, proximately caused and continues to cause damages to MSI.

60. Plaintiffs have suffered, and will continue to suffer, damages proximately caused

by the Defendant, Commissioner of the State of New Hampshire Banking Department .

COUNT IV
(Declaratory Judgment)

61. Plaintiffs incorporate all previous paragraphs as if fully set forth herein.

62. 28 U.S.C. §2201 grants the Court the power to entertain and make declaratory judgments on actual controversies of a justiciable nature, and the present controversy is such an actual justiciable controversy.

63. The Defendants have abused their regulatory authority granted to it by far exceeding the scope of a reasonable examination in auditing MSI beginning on March 4, 2013, and has violated the Fourteenth Amendment by, among other things outlined herein, indiscriminately demanding *all* email communications from *all* MSI employees for a sixth month period. There is no meaningful oversight purpose served, nor any authorized by statute or due process, which allows an agency to condition the continued existence of a licensee on the agency's unfettered discretion to make unreasonable, unfocused, untargeted, and purposeless demands on the licensee.

64. The Defendants have provided no basis for such an extensive request, and merely baldly cites, without proof, that other companies have been subject to, and willingly complied with, similar requests.

65. Indeed the Defendants were granted by statute the authority to promulgate regulations including those governing the Defendant's oversight over companies such as MSI. The Defendants have never promulgated one such regulation, thereby lending credence to the reasonable belief that it does not wish to limit its powers by putting forth regulations for appropriate notice and comment.

66. The result is that the Defendants have assumed for themselves plenary, yet

undefined and unauthorized, powers to conduct themselves, and, when questioned by a licensee concerning its authority, the purported basis for exercising such powers the Defendants essentially "because we can."

67. MSI asked such questions and requested the basis for the extensive requests made during its March 2013 audit—which is still ongoing—and received no adequate response other than pointing MSI to the same overbroad, vague and constitutionally inform statutes already discussed..

68. Such unfettered power violates the Fourteenth Amendment.

69. The Defendants and their agents have acted "under color of state law" by the various abuses cited herein against MSI and that were an exercise of power conferred by virtue of state law.

70. Plaintiffs were deprived of due process rights and privileges by the Defendant's actions as outlined herein.

71. For these reasons, Plaintiffs respectfully request that the Court enter judgment declaring that the Defendants must immediately cease their current examination of MSI, promulgate appropriate regulations consistent with its statutory authority, refrain in any future oversight activity with respect to MSI from engaging in such acts, and otherwise comply with due process and equal protection considerations of its licensees with respect to its regulation of the mortgage business in New Hampshire.

COUNT V
(Permanent Injunctive Relief)

72. Plaintiffs incorporate all previous paragraphs as if fully set forth herein.

73. The Defendants have violated the Fourteenth Amendment as outlined herein by among other reasons failing to promulgate regulations governing their oversight over companies

such as MSI in the mortgage business.

74. As a result, MSI respectfully request the Defendants be enjoined from conducting any further audit activity of MSI.

75. The Defendants have essentially cast the threat of a Consent Decree outlining violations made by MSI since 2010 yet no formal Consent Decree has been pursued against MSI by the Defendants.

76. Instead the Defendants have begun yet another audit of MSI.

77. As a result MSI respectfully requests the Defendants be enjoined from finding MSI in violation of any regulations or law it is subject to that is governed by the Defendants, or alternatively that they are enjoined from finding MSI in violation of any regulation or law subject to the Defendant's authority before November 4, 2012.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all claims and defenses so triable.

WHEREFORE, Plaintiffs pray for the following relief:

A. That the Court enter judgment declaring that Defendants must immediately cease their current examination of MSI, promulgate appropriate regulations consistent with their statutory authority, refrain in any future oversight activity with respect to MSI from engaging in such acts, and otherwise comply with due process and equal protection considerations of their licensees with respect to its regulation of the mortgage business in New Hampshire;

B. That the Court temporarily restrain and preliminarily enjoin the Defendants from enforcing their interpretation of their enabling statutes, particularly those pertaining to record-keeping as well as examinations, RSA 397-A:11 and 397-A:12, until they provides reasonable guidance in the form of regulations properly promulgated pursuant to those statutes and the New

Hampshire Administrative Procedure Act

C. That the Court, after trial by jury, permanently enjoin the Defendants from enforcing their interpretation of their enabling statutes, particularly those pertaining to record-keeping as well as examinations, RSA 397-A:11 and 397-A:12, until they provides reasonable guidance in the form of regulations properly promulgated pursuant to those statutes and the New Hampshire Administrative Procedure Act;

D. That the Court permanently enjoin, pursuant to 42 U.S.C. § 1983, the Defendants from further violations of the Plaintiffs' constitutional rights, particularly the deprivations of civil rights including due process and equal protection which are discussed above;

E. That the Court permanently enjoin the Defendants from further violations of the Fourteenth Amendment, particularly the deprivations of civil rights including due process and equal protections which are discussed above;

F. That the Court enter judgment in Plaintiffs' favor after a trial on the merits; and

G. That the Court grant Plaintiffs such further and other relief as it deems appropriate.

Dated: April 26, 2013

Respectfully submitted,

THE MORTGAGE SPECIALISTS, INC. and
MICHAEL J. GILL
By their attorney,

/s/ Michael S. Parousis
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VERIFICATION

I, Michael J. Gill, hereby declares as follows:

1. I am the President of The Mortgage Specialists, Inc.

2. I have personal knowledge of the Defendants and their activities with respect to me and The Mortgage Specialists, Inc., including those set out in the foregoing *Complaint and Jury Demand*, and if called upon to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint concerning the Defendants are true and correct to the best of my knowledge.

Date: April 29 2013

Michael J. Gill, individually and as
President of The Mortgage Specialists, Inc.

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

Personally appeared Michael J. Gill and made oath that the foregoing statements are true to the best of his knowledge and belief.

Date: April 29 2013

~~Justice of the Peace/~~Notary Public

My commission expires:

CARRIE S. LEMIEUX
MY COMMISSION EXPIRES MARCH 7, 2017
NOTARY PUBLIC
NEW HAMPSHIRE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

The Mortgage Specialists, Inc., et al.

v. Civil No. 13-cv-00156-JL

NH Banking Department, Commissioner

RECUSAL ORDER

Before the court is the plaintiffs' motion for the court to recuse itself from the above captioned matter (doc. no. 20). The motion lacks merit, and is denied. For other reasons, however, the court *sua sponte* recuses itself.

The plaintiffs advance two reasons in support of their request for recusal: (1) the court, between 1990 and 1993, was employed as an associate in a law firm where Attorney L. Jonathan Ross worked as a partner; and (2) the court has exhibited "bias and prejudice" against the plaintiffs and their case. Although Attorney Ross (who represented one of the plaintiffs in his divorce) is not a party in this litigation, plaintiffs' counsel has represented that he is a potential witness based on his role in a rather vast civil conspiracy alleged by the plaintiffs.

Attorney Ross's involvement in the case, as a basis for recusal, requires little discussion. It has been 20 years since the court worked with or for Attorney Ross. The court and Attorney Ross have only infrequent contact, sometimes going years

without running across each other or speaking. While the court holds Attorney Ross in high professional regard, the same can be said for many members of the New Hampshire bar. The court's only contact with Attorney Ross in recent years has involved their participation in efforts, through various entities affiliated with the bench and bar, to increase access to justice for the indigent. Nothing about this relationship requires this court's recusal.

The plaintiffs' allegation of "bias and prejudice," however, requires further discussion. It is true, as represented in the plaintiffs' motion, that the court referred plaintiffs' counsel to the Rules of Professional Conduct during a telephone conference regarding the plaintiffs' request for temporary and preliminary injunctive relief. That suggestion, however, was not based on skepticism regarding the plausibility of the civil conspiracy alleged in the complaint, as plaintiffs suggest, or any other bias or prejudice toward their case.[1] Rather, it was

[1]The court's understanding of the alleged conspiracy (or conspiracies) is as follows:

Plaintiffs The Mortgage Specialists, Inc. ("MSI") and Michael Gill, president and majority owner of MSI, allege that the New Hampshire Banking Department engaged in a "longstanding conspiracy" with a number of attorneys, including the plaintiffs' own former counsel Alexander Walker and his colleagues at Devine Millimet & Branch, PA, "to engage in tortious conduct designed to put MSI out of business and to cover up the Department's own oversight failures." These include, among other things, the

Department's failure to detect the wrongdoing of Financial Resources Mortgage, Inc. ("FRM"), a New Hampshire-based mortgage originator that collapsed in 2009. By undertaking and publicizing an investigation of MSI, the plaintiffs contend, the Department was able "to distract attention from the unfolding issues surrounding the Department's lack of oversight of FRM."

According to the plaintiffs, Attorney Walker used his "close personal contact" with the Department to engineer this investigation. Attorney Walker did so, the plaintiffs assert, to distract Gill from (a) his wholly separate conspiracy with the counsel involved in his divorce--Attorney Ross, whom Gill had retained at Attorney Walker's recommendation, and Stephen Tober, the attorney for Gill's wife--"to churn and bill excessive and unnecessary legal fees," and (b) their joint "destruction of computer and other evidence in the divorce case." Prior to enlisting the help of the Department to cover up this conspiracy, the plaintiffs claim, Attorney Walker had "steered" Gill to several other attorneys--James Tenn of Tenn & Tenn, PA; R. David Depuy of McLane, Graf, Raulerson & Middleton, PA; and Timothy Coughlin of Couglin, Rainboth, Murphy & Lown, PA--who were "friends or close associates" of Attorney Walker and, acting at his direction, assisted him in both prolonging the divorce action in order to generate additional legal fees and concealing the misconduct that had previously occurred.

In pursuit of their conspiracy, the Department, Attorney Walker, and his firm, in addition to scheming to investigate MSI, allegedly disclosed confidential information belonging to MSI. They did this by enlisting an employee of Proficio Mortgage, a competitor of MSI and respondent in another case before the Department, to post the information (along with supposedly defamatory statements about MSI) on a web site. Shortly after he did so, the Department allegedly dismissed the charges against Proficio. While Gill and MSI encouraged Attorney Walker and the Department to investigate the disclosure of this information, Attorney Walker and the Department took what the plaintiffs claim were only halfhearted efforts to do so, in an attempt to prevent their conspiracy from being discovered.

More recently, the Department has undertaken what the plaintiffs claim is an abusive audit of MSI, demanding four months' worth of the company's e-mails and threatening to suspend the company's license if it does not comply. The plaintiffs also

suggested in response to counsel's repeated claims of ignorance regarding the facts alleged in that complaint, and further claims that he was not its author (although the amended complaint bears his signature) and was new to both his employment in the plaintiffs' company and his representation of the company in this litigation. These claims of ignorance and disavowal of responsibility for the allegations in this lawsuit are difficult to square with counsel's duty to inform himself of the facts of his clients' case and only press non-frivolous claims, see N.H. R. of Prof. Conduct 3.1, and his duty of candor toward the court, see N.H. R. of Prof. Conduct 3.3. It was not the court's intention to threaten or attempt to intimidate plaintiffs' counsel, or to dissuade him or the plaintiffs from further pursuing this case.

Nonetheless, the court's careful review of the complaint reveals that there are several other New Hampshire attorneys alleged to have some role in the civil conspiracy, at least one of whom (unlike Attorney Ross) is on this court's recusal list. While the court is certain that it could preside impartially over

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assert that the Department has enlisted the New Hampshire Department of Labor to institute an inspection of MSI "in a further effort to harass MSI and to dissuade MSI from pursuing information concerning the conspiracy between the Department and MSI's former counsel."

this case, in an abundance of caution and deference to the applicable standards set forth under 28 U.S.C. § 455(a) and Canon 3(c)(1) of the Code of Conduct for United States Judges, it *sua sponte* recuses itself from this case.

SO ORDERED.

Joseph N. Laplante
United States District Judge

Dated: May 10, 2013

cc: Michael S. Parousis, Esq.
Nancy J. Smith, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

The Mortgage Specialists, Inc. and
Michael J. Gill

v. Case No. 13-cv-156-SM

NH Banking Department, Commissioner

O R D E R

On June 28, 2013, the Court heard oral argument on plaintiffs' Emergency Supplemental Motion for Temporary Restraining Order and Preliminary Injunctive Relief, as well as defendant's Motion to Dismiss. Oral orders were entered denying plaintiffs' Emergency Supplemental Motion for Temporary Restraining Order and Preliminary Injunctive Relief (document no. 35) and granting the defendant's Motion to Dismiss (document no. 21). Plaintiff was given the opportunity to file an amended complaint within 30 days. No amended complaint has been filed with the court.

The Clerk of Court shall enter judgment in accordance with the oral order granting the defendant's Motion to Dismiss entered on June 28, 2013, and close the case.

SO ORDERED.

Steven J. McAuliffe
United States District Judge

Date: August 9, 2013

cc: Michael S. Parousis, Esq.
Nancy J. Smith, Esq.
Richard Fogal, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

The Mortgage Specialists, Inc. and Michael J. Gill

v.

Case No. 13-cv-156-SM

Commissioner, N.H. Banking Department

JUDGMENT

In accordance with the Oral Order entered on the record by Judge Steven J. McAuliffe on June 28, 2013, granting the defendant's motion to dismiss, and the Order entered on August 8, 2013, judgment is hereby entered.

By the Court,

/s/ James R. Starr

James R. Starr, Clerk

Date: August 13, 2013

cc: Michael S. Parousis, Esq.
Nancy J. Smith, Esq.
Richard Fogal, Esq.